

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION**

JEANETTE R. BANTA, )  
                        )  
Plaintiff,           )  
                        )  
v.                    )      **No. 1:16-cv-436**  
                        )  
**WAL-MART STORE EAST, LP,** )      **JURY DEMAND**  
                        )  
                        )      **MAGISTRATE JUDGE STEGER**  
                        )      (**by consent**)  
Defendant.           )  
                        )

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant moves the Court for summary judgment pursuant to Fed. R. Civ. P. 56.

This is a slip and fall premises liability action. Plaintiff brought this action to recover for injuries allegedly sustained on October 5, 2015, when Plaintiff slipped and fell in Wal-Mart Store #698 in Cleveland, Tennessee.

**GROUNDS**

This motion should be granted because Plaintiff cannot establish a *prima facie* negligence claim against Defendant under a creation, actual notice, or constructive notice theory of liability. Plaintiff has not presented any evidence concerning where the liquid came from or how long it was on the floor before Plaintiff slipped. Tennessee courts consistently dismiss constructive notice premises liability claims when the plaintiff does not present evidence establishing how long the alleged dangerous condition existed before the plaintiff's accident. There is no genuine dispute as to any material fact, and Defendant is entitled to judgment as a matter of law.

## SUPPORTING DOCUMENTS

In support of this motion, Defendant submits the following:

- A) A memorandum of law;
- B) A statement of material facts; and
- C) Excerpts from Plaintiff Jeanette Banta's deposition<sup>1</sup>;

The following unpublished opinions are attached to the memorandum of law in support of this motion:

- 1) Martin v. Wal-Mart Stores, Inc., 2005 WL 2993931 (6<sup>th</sup> Cir. Nov. 7, 2005);
- 2) White v. BI-LO, LLC, 2008 WL 4415781 (Tenn. Ct. App. Sept. 26, 2008); and
- 3) Benn v. Public Bldg. Authority of Knox County, 2010 WL 2593932 (Tenn. Ct.

App. June 28, 2010).

s/ Elle G. Kern  
G. Andrew Rowlett, No. 16277  
Elle G. Kern, No. 34301  
HOWELL & FISHER, PLLC  
Court Square Building  
300 James Robertson Parkway  
Nashville, TN 37201-1107  
(615) 244-3370  
Attorneys for Defendant

---

<sup>1</sup> Defendant will file excerpts of Plaintiff's Deposition Testimony as supplements to the motion as soon as the court reporter is able to provide them. The court reporter has been unable to finish the transcript because of a medical emergency. Defendant is filing contemporaneously with this motion a motion for leave of the Court to supplement defendant's motion for summary judgment, supporting memorandum, and statement of facts with said excerpts.

## **CERTIFICATE OF SERVICE**

I certify that the foregoing was served via the electronic filing system upon:

H. Franklin Chancey  
CHANCEY, KANAVOS, LOVE & PAINTER  
121 Broad Street SW  
P.O. Box 42  
Cleveland, TN 37364-0042

this the 30th day of January, 2018.

s/ Elle G. Kern